

(2022) 04 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3217 Of 2017

Santosh Kumar Mahto

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 293, 293(2), 294, 311, 313

Citation : (2022) 04 JH CK 0030

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Priya Shrestha, M.B. Lal

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Indrajit Sinha, learned counsel for the petitioner, Mrs. Priya Shrestha, learned counsel for the State and Mr. M.B. Lal, learned counsel for opposite party no.2.

2. This petition has been filed for quashing and setting aside the order dated 23.11.2021 passed in S.T. Case No.336 of 2018 (arising out of Barwadda P.S. Case No.67 of 2018) passed by the learned District and Additional Sessions Judge-X, Dhanbad, whereby petition filed by the petitioner under Sections 311 of the Cr.P.C. has been rejected.

3. The petitioner is being tried as an accused in S.T. Case No.336 of 2018. After the closure of the prosecution witness on 03.08.2021, the statement of the accused was recorded under Section 313 of the Cr.P.C., wherein the petitioner denied the allegations put to him. After recording of statement under Section 313 Cr.P.C., the learned court below received report from F.S.L., Ranchi, which was forwarded by the learned Magistrate, Dhanbad. The prosecution moved a petition dated 26.08.2021 under Section 294 of Cr.P.C. with the prayer to mark the said F.S.L., Ranchi report as exhibit. The petitioner filed rejoinder petition

dated 01.09.2021 opposing the petition of the prosecution stating therein that the petitioner is not aware of the F.S.L. report and the petitioner would be seriously prejudiced if the copies of the F.S.L. report is not provided to him. The petitioner filed another petition dated 28.09.2021 under Section 293(2) and 311 of Cr.P.C. praying inter alia to summon the Director of F.S.L., Ranchi as a witness. The said petition filed by the petitioner was rejected on 23.11.2021. Aggrieved with this order, the petitioner has filed this petition.

4. Mr. Indrajit Sinha, learned counsel for the petitioner assailed the impugned order on the ground that Section 293 Cr.P.C. is an exception to the rule that the document needs to be proved before it can be admitted as a piece of evidence. He further submits that as per Sub-section (2) of Section 293 Cr.P.C., the power can be used either suo motu or at the instance of the accused person. He also submits that Sub-section (2) bestows a right on the accused to challenge the authenticity and veracity of the contents of the report. The said right is a substantive right which must be brought to the notice of the accused. According to him, it was necessary to bring to the notice of the petitioner, as per Sub-section (2) of Section 293 Cr.P.C. He further submits that however in the case in hand, such petition was filed on behalf of the accused which is a right of the accused and if a person who has submitted the F.S.L. Report, is not cross-examined by the accused, it will be seriously prejudiced.

5. Per contra, Mr. M.B. Lal, learned counsel for opposite party no.2 submits that the learned court has discussed every thing in the order dated 23.11.2021 and the learned court below has rightly rejected the petition filed by the petitioner. He further submits that the learned court below has passed well reasoned order and there is no illegality in the impugned order and this Court may not interfere in this petition.

6. Mrs. Priya Shrestha, learned counsel for the State submits that it is the discretion of the court to exercise its power under Section 293 Cr.P.C. She further submits that Section 311 Cr.P.C. is also discretionary in nature and second part of Section 311 Cr.P.C. is mandatory.

7. In view of the above facts and considering the submissions of the learned counsel for the parties, for correct appreciation of Section 293 Cr.P.C., the same is quoted herein below:

"293. Reports of certain Government scientific experts.—

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief [Controller] of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government scientific expert specified by notification, by the Central Government for this purpose].”

8. Section 293 of the Cr.P.C. is considered in very rare cases. However, the said provision is a very important provision which deals with admissibility of report of a Government Scientific Expert. So far as the report is concerned, that is admissible in terms of the above section. However the authenticity needs not be proved by a witness, which can be marked as an exhibited document. It is also admissible without calling or examining the expert as a witness. In light of provision of Section 293 Cr.P.C, it can be used as evidence without its formal proof. However, a report of the Forensic Science Laboratory is not admissible in evidence unless it is tendered in evidence and exhibited. In the case in hand, the accused has filed a petition under Sub-section (2) of Section 293 Cr.P.C. If a report is being used as an incriminatory piece of evidence against the accused, he has got a right to challenge the same and therefore the accused-petitioner has filed petition under Sub-section (2) of Section 293 Cr.P.C. The justice should not be done but it should appear to have been done. There is no doubt that Section 313 Cr.P.C. is a discretionary power of the court and it is also well settled that the power can be exercised at any stage of the trial. To avoid further defence after the trial that opportunity in light of Section 293 Cr.P.C. was not provided to the petitioner. It was desirable that the petitioner could be allowed to cross-examine the person who has submitted the F.S.L. report.

9. Accordingly, the trial court shall call the Director of the State Forensic Science Laboratory, Ranchi within a shortest possible time on a particular date, fixed by that court for the purpose of his cross-examination by the accused-petitioner. It is made clear that on a date fixed by the court, the petitioner, without fail, shall cross-examine the Director of the State Forensic Science Laboratory, Ranchi and no further adjournment shall be provided to the accused-petitioner. If the

petitioner failed to examine the Director of the State Forensic Science Laboratory, Ranchi on the date fixed by the trial court, the trial court shall proceed in the matter without providing further opportunity to the petitioner.

10. In view of the above facts, the impugned order dated 23.11.2021 passed in S.T. Case No.336 of 2018 (arising out of Barwadda P.S. Case No.67 of 2018) by the learned District and Additional Sessions Judge-X, Dhanbad is modified to the above extent.

11. With the above observation and direction, this petition stands disposed of.

12. Let a copy of this order be communicated to the concerned court through FAX at the cost of the petitioner.